



EXHIBIT 9
DATE 2/8/07
HB 514

MONTANA ADVOCACY PROGRAM, INC.

The Civil Rights Protection & Advocacy System for the State of Montana

Main Office

400 North Park Avenue
P.O. Box 1681
Helena, Montana 59624
406-449-2344 Voice/TDD
406-449-2418 FAX
E-mail:
advocate@mtadv.org

Visit us on the web at:
www.mtadv.org

Missoula Office

1280 S. 3rd Street West
Suite 4
Missoula, Montana 59801
406-541-4357 Voice/TDD
406-541-4360 FAX

Executive Director

Bernadette Franks-Ongoy
Esquire

Board of Directors

Bob Liston
President
Missoula

Gay Moddrell
Vice President
Kalispell

Sylvia Danforth
Secretary/Treasurer
Miles City

Richard Emery, Ph.D.
Helena

Dustin Hankinson
Missoula

John Martin, Esq.
Great Falls

Diana Tavary
Helena

Susie McIntyre
Advisory Council Chair
Great Falls

February 8, 2007

Re: HB 514

Dear Madam Chair and Members of the House Judiciary Committee,

The Montana Advocacy Program would like to thank Representative Caferro for bringing HB 514.

One of the units at the Montana Advocacy Program is dedicated to the investigation of abuse and neglect of people with disabilities in state institutions, private institutions and in the communities. In our work, we have witnessed inequities that result from the definition of "without consent" in the sexual assault and sexual intercourse without consent laws as they are currently written. Mont. Code Ann. § 45-5-501 (1) (2005). This bill addresses those inequities.

Currently the definition of situations where sexual activity is "without consent" for purposes of the offenses of sexual assault and sexual intercourse without consent includes those where the victim is "mentally defective" or "incapacitated," "physically helpless," or less than 16 years old. Id. None of these definitions adequately protect youth in psychiatric residential treatment facilities who are 16 years old or older, or adult patients in the Montana State Hospital or the Montana Mental Health Nursing Care Center or adult residents of the Montana Developmental Center or community group homes -- many if not most of whom do not fit the definition of "mentally defective," "incapacitated," or "physically helpless."

The facilities that we monitor include psychiatric residential treatment facilities for children often with serious emotional disturbance such as Shodair Hospital, the Yellowstone Boys and Girls Ranch, and Acadia in Butte. We have been aware of several incidents in recent years of staff sexual contact with residents of these facilities. Prosecution of this contact has occurred where the youth is 15 or younger, but has not generally occurred where the youth is 16 years old or older. This is because these youth 16 years old and older, although they had serious emotional disturbance, did not fit the definition of mentally defective, incapacitated or physically helpless under current law. Thus, the law treated these as consensual sexual acts, even though the staff perpetrator in each instance was an adult with supervisory authority over the youth patients and the youth in the psychiatric facility were not generally not free to leave whenever they chose and thus could not avoid the staff perpetrator.

There is a similar problem with regard to adult patients with mental illness at the

TOLL FREE 1-800-245-4743

To: House Judiciary Committee
Re: Testimony in support of HB 514
Date: February 8, 2007
Page 2

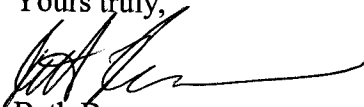
Montana State Hospital, Montana Mental Health Nursing Care Center, behavioral health inpatient facilities, mental health centers, and adult residents of the Montana Developmental Center and group homes for people with developmental disabilities. Although these patients have mental illnesses, developmental disabilities or both, many would not fit the definition of mentally defective or incapacitated. Thus, they are not protected in the criminal law from sexual exploitation by staff, contractors or volunteers working at those facilities who have supervisory or disciplinary authority over them or are providing treatment to them.

This stands in stark contrast to the protection in current law of such sexual exploitation of incarcerated inmates by prison staff. Mont. Code Ann. § 45-5-501 (1)(b)(v). This contrast would be made even greater by SB 50 sponsored by Sen. Gallus to extend this protection to probationers and parolees that has passed the Senate and has been transmitted to the House, if the change that this bill would bring about is not made.

The youth and adults in mental health facilities, residential facilities and group homes for people with developmental disabilities should have at least as much protection from sexual exploitation as inmates in correctional facilities and those on probation and parole. This bill would provide that protection.

Thank you for the opportunity to testify in support of this important measure.

Yours truly,



Beth Brenneman
Staff Attorney